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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 70-341

RONALD DALE TAGGART,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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SUPPLEMENTAL TABLE OF AUTHORITIES

Bachman v. *Bradley*, No. 2673 (W.D. Mo. Jan. 5, 1971) 3 SSLR 3948 4

Baker v. *Laird*, 316 F.Supp. 1, N.D. Calif. (1970) 4

U. S. ex rel. Barr v. *Resor*, No. 23815 (D.C. Cir. Mar. 31, 1971) 3 SSLR 3999:8 4

Bates v. *Commander, etc.*, 413 F.2d 475 (1969) 1 Cir. 5

Bohnert v. *Faulkner*, 6 Cir., 438 F.2d 747 (1971) 5

Bortree v. *Resor*, D. of Col. 1970, 316 F.Supp. 93 5

Bortree v. *Resor*, No. 24607 (D.C. Cir. Mar. 2, 1971) 3 SSLR 3788 5

U. S. ex rel. Brooks v. *Clifford*, 400 F.2d 700 (1969) 4th Cir. 6

Cohen v. *Laird*, No. 69-1085 (D. S.C. June 26, 1970) 3 SSLR 3875 6

Application of Corvell, 307 F.Supp. 209, N.D. Calif. (1969) 6

Donham v. *Resor*, 2 Cir., 436 F.2d 751 (1971) 6

Goodwin v. *Laird*, 317 F.Supp. 863 N.D. Calif. (1970) 6

Gordon v. *Resor*, S.D.N.Y., 323 F.Supp. 268 (1970) 6

Grossman v. *Fallwell*, No. 21429 (D. Md. Nov. 28, 1969) 3 SSLR 3977 7

U. S. ex rel. Healy v. *Beatty*, 424 F.2d 299, 5th Cir. (1970) 7

Helwick v. *Laird*, 5 Cir., 438 F.2d 959 (1971) 7

Keil v. *Seaman*, D. Md., 314 F.Supp. 816 (1970) 7

Kepple v. *Laird*, 319 F.Supp. 1342, D. of C. (1970) 8

La Manna v. *Laird*, W.D. Tex., 322 F.Supp. 1289 8

Lovallo v. *Resor*, No. 71C48 (E.D. N.Y. Feb. 4, 1971), 3 SSLR 3874 8

McMahan v. *Laird*, S.D. Cal., 320 F.Supp. 485 (1970) .. 9
O'Connor v. *McKean*, No. 70-93, N.D. Ala. (May 5, 1970), 3 SSLR 3498 9
Polsky v. *Wetherill*, 438 F.2d 132, 10th Cir. (1971) 9
Rabbito v. *Larson*, No. 70-572, N.D. Calif. (Aug. 19, 1970), 3 SSLR 321 9
U. S. ex rel. Sheldon v. *O'Malley*, 420 F.2d 1344, C.A. D.C. (1969) 9
U. S. v. *Sigmon*, CM 416356 (Board of Review, U.S. Army, Jan. 2, 1968), 1 SSLR 3054 10
Stehling v. *Casey*, No. 70-C-104 (W.D. Wis. Jan. 22, 1971), 3 SSLR 3912 10
Talford v. *Seaman*, 306 F.Supp. 941, D. Md. (1969) 10

REGULATIONS

DoD 1300.6 ..... 2, 3, 4
AR 635-20 ..... 2, 3, 4, 8

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SUPPLEMENT

TO

PETITION FOR WRIT OF CERTIORARI

Due to some unexplained reason several pages of galley proof were not included in the printing of Taggart's petition.

The following is to be read as if inserted on page 8 immediately before "Point Two":

We present, in this portion of our petition, the determinations of over two dozen courts that support our

thesis. They contradict the "assurance" passed on to this Court by the General Counsel of the Army.

What governs procedures in the Army? The ARs, the army regulations. How much weight should the Court give a letter from the General Counsel, based on reports to him, augmenting the record?

On a battlefield a recognized means of communication, in small units is "Pass the Word." If the General Counsel adds "I'm Passing the Word" then a little more weight is to be given his good offices. In army officer groups a well recognized means of communicating is "Pass the Word."

But what has been, and what *is*, the practice of the army in our context? A little history is desirable for the light it throws.

In conscientious objector matters, *before* the 1968 amendment to DoD 1300.6, Pass the Word resulted in sabotage to the AR 635-20 as is to be seen from counsel's attached affidavit, ¶7. The sabotage is why the 1968 amendment was made by the Secretary of Defense.

Since the record may be augmented by hearsay (from sources deemed reliable) we invite attention to our affidavit, attached to this petition. In the context of the argument being now made we quoted the following portion of the affidavit:

The Central Committee for Conscientious Objectors is an organization largely operated by Quakers, and one that has had the respect of all concerned: Pentagon, Selective Service System, historic peace churches, etc. It has had a vast quantity of experience in these conscientious objector matters for a generation. In its publication "Hand-

book, for Conscientious Objectors, Eighth Edition, Third Printing, December, 1966, re DoD 1300.6, we read:

> "Although many men were discharged on grounds of conscience during 1964 and 1965, since the spring of 1966 virtually all applications have been denied regardless of merit." [82]

In its Ninth Edition, Second Printing, January, 1968 it saw no reason to alter the above statement and repeated it verbatim.

In its Eleventh Edition, September, 1970 it reported "About 70% of the applications for noncombatant status and about 20% of the applications for CO discharge are approved. Some unsuccessful applicants are discharged on other grounds." [93]

Evidently, the 1968 Amendment to the DoD improved the situation. What brought about the amendment and what were its new provisions?

1. Whereas, in 1964 and 1965 "many" of applicants for an AR 635-20 discharge were successful, Pass the Word reduced it to denials of "virtually all applications" in 1966 and 1967.

See counsel's affidavit of how this was done.

2. This sabotage, and the attendant outcry and pressure on the Pentagon brought the 1968 DoD 1300.6 amendment. *Thereafter* (1) the applicant's commanding officer was not to be his hearing officer; (2) a knowledgeable officer, 03 (captain) or higher was to be the hearing officer and (3) the applicant could have private counsel at the 03 Hearing. These changes clearly meant that the Department of Defense wanted the applicant to have a fair hearing.

The following, recent court opinions emphasize our claim that the standards for discharge are governed by the plain and clear mandate of DoD 1300.6 and AR 635-20 *and also show* that for some reason, despite the amended DoD 1300.6, a considerable proportion of the military 03 hearings are still conducted (1) by officers *in the chain of command* [forbidden], (2) officers *not* knowledgeable [forbidden]; (3) and that the courts *uniformly* have used the plain standard of the DoD and the AR namely, that the conscientious objections must not have become "fixed" before the enlistment or induction ceremony.

[these cases are in alphabetical order: all italics is supplied]

Bachman v. *Bradley*, No. 2673 (W.D. Mo. Jan. 5, 1971), 3 SSLR 3948

"And further, he states:

> *'In the past months* of my active duty service, *I have recognized* that the realities of Army life and functions *are irrevocably in conflict* with my convictions and beliefs.'" [3948]

Baker v. *Laird*, 316 F.Supp. 1, N.D. Calif. (1970)

> ". . . *the army could deny* an application for discharge to one claiming to be a conscientious objector where his application reveals that the grounds and beliefs adduced in support thereof *are identical with those shown to have pre-existed* induction. . . ." [4]

United States ex rel. Barr v. *Resor*, No. 23815 (D.C. Cir. March 31, 1971) 3 SSLR 3999:8

> *"Barr never submitted a claim* for exemption from all military service *to his Selective Board. The Army Board's determination* that Barr's application was governed by paragraph 3b (2) of *AR 635-20 was* therefore without basis in fact and habeas corpus was properly granted." [3999:10]

Bates v. *Commander, etc.*, 413 F.2d 475 (1969) 1 Cir.

> "The Commandant's initial findings implicitly attack the petitioner's sincerity. But by holding that petitioner's present claim is inconsistent with his prior voluntary enlistment, the Commandant puts him in a 'hanged if he does, hanged if he doesn't' predicament. *Under DoD Direction 1300.6 IV B2, conscientious objection will not be considered unless it arose after* induction or enlistment. By the Commandant's reasoning, therefore, petitioner's claim cannot be considered if it arose prior to his enlistment and is evidence of insincerity if it arose afterwards. By the force of this logic, no member of the armed services could ever qualify as a conscientious objector." [478]

Bohnert v. *Faulkner*, 6 Cir., 438 F.2d 747 (1971)

> ". . . the Department of Defense provides for in-service discharge for conscientious objectors and requires that *such beliefs must have been acquired after* the enlistee entered the service, the timing of the request for discharge supports no more than an inference insufficient alone to constitute a basis in fact for doubting sincerity." [754]

Bortree v. *Resor*, D. of Col. 1970, 316 F.Supp. 93

> "In accordance with Army Regulation No. 635-20, the petitioner was interviewed by . . . Captain H. J. Nitko[1], an officer in the Army *who is knowledgeable* in policies and procedures relating to conscientious objector matters; [f. 1-1. 'Orginally Captain Thomas M. Duszynski had interviewed the petitioner, but he was disqualified by Headquarters, Department of the Army, since he was in the petitioner's *chain-of-command*.']"

Bortree v. *Resor*, No. 24607 (D.C. Cir. Mar. 2, 1971) 3 SSLR 3788

> "Moreover, all indications are that *these officers did not have legally sufficient grounds for their recommendations*. Captain Nadwodny was *Bortree's unit*

commanding officer at Fort Dix and presumably had some contact with him, but he did not interview Bortree concerning his application for discharge." [3792]

United States ex rel. Brooks v. *Clifford*, 400 F.2d 700 (1969) 4th Cir.

"Indeed, the administrative procedures were devised for the very purpose of permitting the assertion of a claim of conscientious objection . . . *when the objection was not formulated until after* military service had begun." [707]

Cohen v. *Laird*, No. 69-1085 (D. S.C. June 26, 1970) 3 SSLR 3875

"Yet, it was *during this very period* of his basic training that he asserts *his convictions 'crystallized.'*" [3877]

Application of Corvell; 307 F.Supp. 209, N.D. Calif. (1969)

". . . *preclude granting discharges* to those . . . whose beliefs *pre-dated* but were not claimed prior to *active duty.*" [212]

Donham v. *Resor*, 2 Cir., 436 F.2d 751 (1971)

[On the requirement that the *Hearing Officer be knowledgeable* only one opinion is known to counsel *where the decision turned on this*, the Court finding that the Hearing Officer (a Colonel Gleason, at West Point) was *not knowledgeable in context.*] [754]

Goodwin v. *Laird*, 317 F.Supp. 863, N.D. Calif. (1970)

". . . he has adequately explained how and why *his beliefs became fixed after* entry to the service." [866]

Gordon v. *Resor*, E.D.N.Y., 323 F.Supp. 268 (1970)

"The armed forces naturally focus their attention on conscientious objection *crystallizing after induction*,

leaving cases of earlier crystallization to the jurisdiction of the Selective Service System. Ehlert v. United States, 422 F.2d 332 (9th Cir. 1970); Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968); United States v. Gearey, 368 F.2d 144, 149-150 (2d Cir. 1966); cert. denied 389 U.S. 959, 88 S.Ct. 335, 19 L.Ed.2d 368 (1967); DoD 1300.6, supra." [270]

Grossman v. *Fallwell*, No. 21429 (D. Md. Nov. 28, 1969) 3 SSLR 3977

"All three of the line officers then (Captain Smith, Captain Clark and Lieutenant Colonel Gettings) concurred in the following critical finding:

1. That petitioner was sincere,

2. That his convictions were motivated by religious beliefs, and

3. That *they became fixed after he went in the Army.* In the face of those conclusions reached by those Army officers who were closest to petitioner, and who had personal contact with him, it is indeed difficult to understand how the Review Board could make diametrically opposed findings." [3979]

United States ex rel. Healy v. *Beatty*, 424 F.2d 299, 5th Cir. (1970)

". . . the objection itself *must so manifest itself and not exist prior to entry on active duty.*" [302]

Helwick v. *Laird*, 5 Cir., 438 F.2d 959 (1971)

"Rather, the requirement of AR 635-20 (3) (b) is that the objection itself—the objection to participation in war in any form—*must become fixed only after entry into the Army.*" [966]

Keil v. *Seaman*, D. Md., 314 F.Supp. 816 (1970)

"Nor does this Court find any basis in fact for concluding that Kiel's beliefs were not sincerely reached

and held, *or that they did not become crystallized and fixed until after* his induction into the Army." [822]

Kepple v. *Laird*, 319 F.Supp. 1342, D. of C. (1970)

After citing AR 635-20, ¶2b on page 1344 the court concluded:

> "There is no showing that Kepple was under any compulsion to enlist in the Army and *no evidence* to overcome his claim that his convictions as to *conscientious objection had not matured at that time.*" [1345]

La Manna v. *Laird*, W.D. Tex., 322 F.Supp. 1289

> "The case of United States ex rel. Healy v. Beatty, supra, is in point. There it was argued that Healy's religious beliefs did not change and did not 'develop subsequent to entry into the active military service.' In fact, Pvt. Healy conceded this. However, this loses sight of the fact that 'the Regulations speak of the development of conscientious objection to the participation in war "in any form" *after induction*'; that is to say, participation in such noncombatant service as the Medical Corps." [1292]

Lovallo v. *Resor*, No. 71C48 (E.D. N.Y. Feb. 4, 1971), 3 SSLR 3874

> "His experiences in the Army, according to his statements, served to increase his adversion [sic] to violence and warfare. The personal contacts he made and the exposure to new points of view in the 26th Army Band had a further significant impact on his thinking: '. . . [G]radually *my conscience assumed a new depth of commitment* to the beliefs that I had long before internalized.' AHBCA-BA at p. 6. He became active in the Staten Island Peace Coalition which along with the reported events at Mylai further deepened his commitment." [3874]

McMahan v. *Laird*, S.D. Cal., 320 F.Supp. 485 (1970)

> *After citing* DoD 1300.6 and Bupersnote 1900 dated August 24, 1970 the court concluded "Clearly, petitioner has more than satisfied his burden. . ." [489]

O'Connor v. *McKean*, No. 70-93, N.D. Ala. (May 5, 1970), 3 SSLR 3498

> "Army Regulations 635-20 2.b. (1) provides for consideration of applications for discharge when the conscientious objection develops subsequent to entry upon active military service, but *specifically excludes from consideration* requests based solely on conscientious objection *which existed, but not claimed, prior* to induction. This same philosophy expressed in the comparable Selective Service Regulations has been approved by the Courts. Keene v. United States, supra; Nellons v. United States, 1 SSLR 3144, 399 F.2d 295 (5th Cir. 1968). There is no reason the Army Regulation should not be given the same treatment." [3500]

Polsky v. *Wetherill*, 438 F.2d 132, 10th Cir. (1971)

> ". . . Polsky was in fact a sincere conscientious objector but that his beliefs in such regard *had not crystallized during military service* but were existent at the time of Polsky's voluntary enlistment." [133]

Rabbito v. *Larson*, No. 70-572, N.D. Calif. (Aug. 19, 1970), 3 SSLR 321

> ". . . *hearing officer denied* petitioner's claim because his application is based solely on conscientious objection *which existed but was not claimed prior* to his coming into military. . . . Petitioner's application in some detail describes how and why his beliefs became fixed after entry to the service." [3212]

United States ex rel. Sheldon v. *O'Malley*, 420 F.2d 1344, C.A. D.C. (1969).

> "The general policy is stated to be that *consideration will be given* to separation requests '*when* such con-

scientious objection *develops subsequent to entry* into the active military service.' " [1345]

United States v. *Sigmon*, CM 416356 (Board of Review, U.S. Army, Jan. 2, 1968), 1 SSLR 3054

"The only factual questions . . . (1) Did the appellant actually attempt to apply for a discharge; and (2) Did his beliefs arise *subsequent* to his entry on active duty." [3055]

Stehling v. *Casey*, No. 70-C-104 (W.D. Wis. Jan. 22, 1971), 3 SSLR 3912

"He stated that his views *had not begun to crystallize until* he had *been activated* as a National Guard member for riot duty on the University of Wisconsin campus. He stated that he was a Roman Catholic at the time of the application, that he had been raised a Catholic and had attended 'a seminary for three years,' but that 'the full impact of the [Christian] concept' of the brotherhood of man had 'never really dawned' on him until the guard duty during the campus disturbance. He referred to a sermon on brotherhood and to certain experiences during his attendance at a National Guard summer camp. He said that 'attending the seminary for three years deepened my religious beliefs,' but that his conscientious objection had not solidified until years later, shortly before the filing of his application." [3912]

Talford v. *Seaman*, 306 F.Supp. 941, D. Md. (1969)

". . . he did not realize the incompatability of his religious beliefs and war in any form, until after his entry into the service."

* * *

"There remains the *issue* of whether Talford's views *became fixed before entry* into the service." [945]

Respectfully,

J. B. TIETZ
Attorney for Petitioners

CERTIFICATE OF COUNSEL

This Supplement to Petition for Rehearing is filed in good faith and not for the purpose of delay.

J. B. TIETZ
Attorney for Petitioner